3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CRIMINAL REVISION No. 91 /2003.

Applicants : 1-Laxminarayan Agrawal, son Of Shri Hajarilal Agrawal, Aged 60 years, Businessman.

2-Smt. Vimla Devi wife of Shri Laxmi Narayan Agrawal Aged 54 years, housewife.

3-Manish Agrawal, son of Shri Laxmi Narayan Agrawal Aged 31 years, Businessman

All residents of Awanti Vihar Colony, Raipur, C.G.

6/5/03

Filed on 20/2/03
by Shri S. Verma Advocate

20/2/03 R to D.R.(J)

Versus.

Non-applicant : State of Chhattisgarh. Through Police Station Civil Lines, Raipur, C.G.

COPY
21/3
C. BILASPUR

CRIMINAL REVISION U/S 397/401 OF THE CR.P.C.

APR

320

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

(1) **Criminal Revision No.91 of 2003**

Laxminarayan Agrawal & others

Vs.

State of Chhattisgarh

(2) **Criminal revision No.92 of 2003**

Dr.Sarita Agrawal

Vs.

State of Chhattisgarh

ORDER

Post for 20.12.2004

Sd/-

Sunil Kumar Sinha

Judge

321

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

(1) **Criminal Revision No.91 of 2003**

Laxminarayan Agrawal & others

Vs.

State of Chhattisgarh

(2) **Criminal revision No.92 of 2003**

Dr.Sarita Agrawal

Vs.

State of Chhattisgarh

Appearance in both the cases:

Shri S.C.Datt, Senior Advocate with Shri P. Diwakar, counsel for the Petitioners.

Shri J.D. Bajpai, Government Advocate with Shri Neeraj Mehta, Shri Rajkumar Gupta and Shri Sanjeev Kumar Agrawa, Panel Lawyers for the State.

Shri Rajeev Shrivastava, counsel for the Complainants/ Objectors.

ORDER
(20.12.2004)

Sunil Kumar Sinha, J,

Since the criminal revisions, referred to above, arise out of a common order dated 01.2.2004, they are being disposed of by this common judgment.

(2) These revisions under section 397 read with Section 401 of the Code of Criminal Procedure are directed against the order dated 01.2.2003 passed in Sessions Trial No.391/2002 by the Sixth Additional Sessions Judge, Raipur, District Raipur (C.G) whereby she framed the charges under section 304-B and in the alternative u/s 306 of the Indian Penal Code against each of the petitioners. Petitioners no.1 to 3 in Cr. Rev. No. 91/2003 are the father in law, mother in law and the husband of the deceased, whereas petitioner no.1 and 2 of Criminal Revision No.92 of 2003 are the sister in law (Nanad) and brother-in-law (Dewar) of the deceased.

(3) Briefly stated, facts of the case are that Manish Agrawal was married with Puja, the deceased, on 24.5.2001. The marriage was solemnized at Raipur. After the marriage, Puja went to reside with her in laws and husband in the matrimonial house in which all of them (the applicants and the deceased) were living together. Puja and Manish went for their Honeymoon to South India on 5.6.2001. They stayed there upto 17.6.2001 and returned back to Raipur. Thereafter on 22.6.2001 they went to visit the house of Dinesh Agrawal at Bhilai who is the brother of Manish. The Couple resided there for two days and again returned back to Raipur on 24.6.2001. Puja committed suicide on 26.6.2001. The merg intimation was registered vide No.42/2001. The de- facto informant of the merg is Smt.Vimla Agrawal who is petitioner no.2 in Cr.Rev.No.91/2003. The intimation is placed at Page 50 of the

paper book. It was lodged on 26.6.2001 at about 18.00 hrs. The incident is said to have taken place at about 15.00 hours. The report reads that when the informant could not find her daughter-in-law in her room in the first floor of the house, she started searching her and ultimately her dead body, in the burnt condition, was found in a store room (*Lakadiwala room*) in the first floor which was locked. She informs in the merg that the lock was opened by her from outside and then only she could see the dead body. The inquest was performed on 27.6.2001. In the meanwhile, the parents of the deceased residing at Sambalpur, were also informed telephonically by the family members of the petitioners and the dead body was sent for post mortem. The parents of the deceased namely Ramesh Chandra Agrawal, Smt.Neela Devi reached Raipur and their statements were recorded on 27.6.2001. The police also recorded the statements of Shyam Sunder Agrawal and Smt. Ratni Devi Agrawal on 28.06.2001, who are uncle and aunt of the deceased. Thereafter, various statements were also recorded by the police, in which the statements of Smt.Vandana, sister of the deceased, Rajul Kumar Jajodia, brother in law of the deceased, Rajkumar Gadodia, cousin of the deceased and few others are there. Besides the above, the statements of various neighbors were also recorded. The parents and relations returned back to their places after the aforesaid enquiry of inquest. However, on 13.10.2001 Shyam Sunder Agrawal, uncle of the deceased lodged the First Information Report in Police Station, Civil Lines, Raipur in

consequence of which an offence u/s 304-B of the IPC was registered vide Crime No.705/2001. In the said report, there were allegations in relation to harassment and assault in connection with dowry and also about treatment of the deceased with cruelty by the family members of in-laws.

(4) On the basis of the first information report, the enquiry commenced and ultimately the statements were again recorded u/s 161 Cr.P.C., by the investigating agency. The statement of Shyam Sunder Agrawal (Uncle), Ramesh Chandra Agrawal (father), Smt. Neela Devi (mother) and Smt. Ratni (aunt) were recorded on 17.10.2001 whereas the statements of Vandana Devi (sister) Rajul Kumar Jajodia (brother-in-law) were recorded on 26.2.2002 and the statements of various other witnesses including the neighbors of the family at Sambalpur were also recorded on various dates. The police after completion of enquiry filed the charge sheet in the concerned Court against all the accused persons (petitioners) u/s 304-B read with section 34 IPC and after committal, the matter was taken up by the Sessions Court. The learned Addl. Sessions Judge after considering the records of the case and the documents submitted therewith and after hearing the submission of counsel for the parties framed charges u/s 304-B and in the alternative u/s 306 IPC against each of the applicants. The petitioners have challenged the validity and legality of the said order in these petitions.

(5) Learned Senior Counsel Shri S.C.Datt, appearing for the petitioners argued that initially in the investigation done by the police during the course of inquest after lodging of the merg intimation by the mother-in-law on 26.6.2001, none of the witnesses raised any allegations either in relation to demand of dowry or in relation to harassment on account of dowry or regarding ill-treatment of the deceased by the petitioners. The entire enquiry was completed in between 26.6.2001 to 27.7.2001. Now, thereafter, in a very planned manner, the first information report was lodged on 13.10.2001 i.e., almost after about 2 ½ months from the date of completion of enquiry of merg and then only, the same witnesses like mother, father, uncle, aunt and other relations have raised allegations against the petitioners. He submits that in fact, these subsequent repeat statements recorded after 13.10.2001 are undesirable, impermissible in procedure after completion of full enquiry and are creatures of afterthought and the order of framing charges against the petitioners are based on no credible material on record. He also submits that the learned Sessions Judge has completely misinterpreted the provisions of law and has mechanically framed the charges against the petitioners. He further submits that the necessary ingredients of the offences charged with are missing in the present case and all the petitioners should have been discharged by the Court below. Placing reliance on a decision of the M.P. High Court reported in ***2002 (1) C.Cr.J. 77 (M.P),*** learned counsel for the petitioners submits that the totality of the circumstances

including those brought to the notice of the Court, on behalf of the accused persons should be considered in order to determine whether a case is fit for going to trial or not. He draws the attention of this Court towards the two stages of investigation in which, in the first stage, that is during the course of inquest none of the witnesses raised any allegations against the petitioners and subsequently in the second stage after a lapse of 2 ½ months, they started raising allegations against them. He refers to a portion of para 5 of the aforesaid judgment which states that "*there may be considerable material on record in a given case. However, the question of prima facie case would be a case of degree. The court is firmly of the view that the trial Court before framing charges should be alive to the totality of the circumstances including those brought to its notice on behalf of the accused persons in order to determine whether a case is fit for going to trial.*"

Learned counsel for the petitioners also placed reliance upon a decision of the Apex Court reported in ***AIR 2002 S.C. 564 (Dilawar Babu Kurane –Vs- State of Maharashtra)*** wherein the Apex Court referring to a decision rendered in the matter of *Union of India –vs- Praful Kumar Samal and others, (1979 (3) SCC pg.5)* observed vide para 12 of the Judgment as under:

> "In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the

> accused persons has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving raise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weight the evidence as if he was conducting a trial."

He further relies on a decision rendered in the matter of ***Niranjan Singh KaramSingh Punjabi –Vs- Jitender Bhimraj Bajaj and others, (AIR 1990 S.C. 1962)*** and submits that as has been held by the Apex Court, even at the stage of framing of charges, the Court is required to evaluate the material and documents on record, with a view to find out that if they are taken at their face value, they disclose the existence of all the ingredients constituting the alleged offence. He also argues that the Court may for this limited purpose shift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth, even if it is opposed to common sense or the broad probabilities of the case.

(6) On the other hand, learned State Counsel submits that at the stage of framing charges the court has only to see

whether prima facie there was sufficient ground to proceed against the accused. He also submits that at this stage, the court cannot appreciate the evidence to arrive at a particular conclusion. He placed reliance on a decision of the Supreme Court in case of ***State of Madhya Pradesh –Vs- S. B. Johari and others*** reported in ***(2000) 2 SCC page 57***. He submits that it would be justified in quashing the charges if even on accepting the entire prosecution case, the charged offence would not be made out. He takes me to the various paragraphs of the decision referred to above. He also refers to the decision of Supreme Court in case of ***Om Wati (Smt.) and another –Vs- State through Delihi Administration and others*** reported in ***(2001) 4 SCC 333*** and argues that the High Court should not ordinarily interfere with the trial Court's order for framing charges unless there is glaring injustice. He takes me to para 12 of the Judgment referring the quotations as it is that "it is the statutory obligations of the High Court not to interfere at the initial stage of framing charges merely on hypothesis imagination and farfetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal case by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law." Relying upon these decisions, he alarmed this Court for not appreciating the evidence at this stage and to accept it as it is and then only to find out as to whether a prima facie case is made out against the petitioners

or not. Further relying upon a decision of Hon'ble the Supreme Court reported in ***2003 AIR SCW 111 (Alamgir Sani -Vs- State of Assam)*** he also argues that merely because the statements of illtreatment or harassment for the dowry is not made by parents and relations of the deceased at the earliest stage and they have stated at the earlier occasions that they do not have any suspicion, their evidence should not be disbelieved and if the court finds that there is prima facie evidence regarding the ingredients of offence u/s 304-B of the IPC, then the charges should be sustained and the petitioners should be put to trial. He draws the attention of this Court to para 9 of the Judgment.

(7) In the light of the aforesaid arguments advanced by the learned counsels for the parties, this court is to find out as to whether the charges framed u/s 304-B or 306 of IPC are to be sustained against the petitioners or not ? Considering the first argument advanced by the learned counsel for the petitioners that the enquiry was finally completed during the course of inquest and when the statements of the witnesses were recorded, these witnesses made no allegations against the petitioners and almost each of them stated that they are having no suspicion regarding the death of the deceased. The witnesses are the father, mother, uncle, aunt and sister of the deceased and therefore, no reliance can be placed on their subsequent unwanted impermissible statements. This Court is of the opinion that the argument advanced by the learned

counsel for the petitioners is non sustainable in the eye of law. The first information report was lodged on 13.10.2001 and only thereafter the statements u/s 161 of Cr.P.C. were recorded. In the first information report as well as in the statements of these witnesses i.e., the father, mother, uncle and the aunt there are certain explanations regarding not making any allegations against the petitioners at the earliest stage. The statements recorded u/s 161 Cr.P.C., on 17.10.2001 cannot be brushed aside by this Court at this stage as learned counsel for the petitioners could not point out any provisions of law which may render that after completion of the enquiry of the inquest and after lodging the first information report, no subsequent second statements u/s 161 Cr.P.C. can be recorded or the statements so recorded cannot be looked into. There is no doubt in the mind of this Court that in the scheme of Code of Criminal Procedure, the stage of recording statements u/s 161 Cr.P.C. comes after lodging the first information report itself. Chapter XII of the Code of Criminal Procedure deals with information to the police and their powers to investigate. Section 154 deals with information in cognizable cases and section 155 deals with information as to the non-cognizable cases and investigation of the same. Section 156 provides Police Officers power to investigate the cognizable offence and section 157 provides procedure for investigation. In consequence of the provisions given u/ss 159 & 160 of the Code of Criminal Procedure, powers have been given to the Police Officers to examine the witnesses under the provisions of Sections 161

and 162 of Cr.P.C. and ultimately after completion of investigation, a report is to be filed u/s 173 of Cr.P.C. The scheme of the Code of Criminal Procedure and the provisions given vide chapter XII thereof clearly indicate that the police officers were fully empowered to record the evidence u/s 161 of the Cr.P.C., when a first information report in relation to a cognizable offence is under investigation. If during the course of an investigation of such a nature, some statements u/s 161 Cr.P.C. are recorded and after perusal of the said statements, a prima facie case is made out against an accused, then a charge sheet is to be filed and the Court while framing charges should be well within the jurisdiction to consider the matter on the basis of the aforesaid statements.

(8) In the light of the above legal position, now the statements of few witnesses are referable in this case. Shyam Sunder Agrawal who is the uncle of the deceased and who is also the first informant in this case has stated in two places in his statement in the following manner.

1) *"वह फोन पर बोलती थी कि मेरे ससुराल वालों को दहेज बिल्कुल पसंद नही आया सभी समान खराब (घटिया) बोलते हैं ओर कहते हैं कि टी.वी., फ्रिज कार वगैरह तो देना ही चाहिये था इसलिये गाली–गलौच भी करते थे तथा मानसिक रूप से भी परेशान करते और कभी–कभी हाथ भी उठा देते हैं बोलकर रोने लगती थी ।"*

2) *"मेरी भतीजी पूजा अग्रवाल की मृत्यु उसके पति सास–ससुर, ननद एवं देवर के द्वारा की जा रही दहेज प्रताड़ना के कारण हुई है ।"*

(Please see page 144 and 145 of the paper book)

The statement of Ramesh Chandra Agrawal, father of the deceased is also as follows:

1) *"पूजा से फोन पर बात हुई थी तो पूजा बताई थी कि मेरे द्वारा दिये गये दहेज से ससुराल वाले संतुष्ट नहीं है । पूजा से प्रायः दो–तीन दिन में फोन से बात होती रहती थी वह फोन पर बोलती थी कि मेरे ससुराल वालों को दहेज बिल्कुल पसंद नहीं आया सब कहते हैं कि समान हल्का व निम्न स्तर का है कम से कम टी.वी. कूलर, फ्रिज वगैरह तो होना ही चाहिये था । गाली–गलौच तथा तंग करते हैं बाकि कभी–कभी मारने के लिये हाथ भी उठा देते हैं बोलकर रोने लगती थी जब वह हनीमून पर गयी थी तब भी उसके फोन से ऐसा लगता था कि वह खुश नहीं है और केवल इतना ही कहती थी ।"*

2) *"अन्दरूनी तौर से हम डरे हुये भी थे कि उड़ीसा से हम रायपुर आये हैं इसलिये पूर्व में इस संबंध में मैंने कोई टिप्पणी नहीं की थी । उड़ीसा जाने के बाद कुछ दिनों में परिस्थियां सामान्य हुई तथा क्योंकि मेरी तबियत खराब थी कुछ सुधरी तब मैं इस संबंध में मैंने लिखा पढी किया था ।"*

(Please see page 148 and 149 of the paper book)

The statement of Neela Devi is also referable. A portion of her statement is as under:

"मेरी लड़की को जलाया गया है स्वयं नहीं जली है । दहेज के कारण ही पूजा की मृत्यु हुई है यह बात एकदम निश्चित है । पूजा की मृत्यु के समय मैं इतना अधिक विचलित हो गई थी कि अपने आप मे नहीं रही । क्या लिखा रही हूं मुझे कुछ होश नहीं था मुझे तो ऐसा लगता था कि"---

(Please see page 152 of the paper book)

Other statements are also there in this case which supports the case of prosecution and which fulfils the ingredients of section 304-B and/or section 306 of the IPC.

(9) Now applying the principles laid down in the matter of Niranjan Singh's case or in the matter of Dilawar Babu Kurane or in the matter of S.B. Johari (all referred to above) which prohibits appreciation of evidence at the stage of framing of charges to arrive at the conclusion as to whether the materials produced are prima facie sufficient or not for convicting the accused persons, the result would be that there is prima facie evidence against the applicants on the basis of which at least the charges can be framed against them. If the arguments of the learned counsel for the petitioners are accepted that the allegations have come in the second statements only in which the story has been differently put up before the investigating agency and for this reason the statements should be discarded, then the same shall amount to appreciating the evidence of all those witnesses which is not permissible under the law at this stage, on the basis of various pronouncements referred to above in my judgment. Hence the first argument of the learned counsel for the petitioner fails that since allegations have come in a subsequent statement shown to be recorded u/s 161 Cr.P.C., at a belated stage should be discarded.

(10) Now coming to the second argument regarding misinterpretation of provisions of law and also regarding

mechanically framing of charges, this Court can only say that no law has been misinterpreted. In this regard, Sections 227 and 228 of Cr.P.C. are referable. The Sessions Court after giving due regards to the provisions of these two sections and considering the entire records of the case and the documents submitted therewith came to the conclusion that there were grounds for presuming that the accused persons have committed offences under the aforesaid sections of IPC, has framed the charges and no mechanical process was adopted by the Court. The charges were framed after giving due opportunity of hearing to the parties and also on the basis of positive allegations on record.

(11) The third argument about non existence of ingredients of the offences cannot be sustained also. A bare perusal of section 304-B and Section 306 of IPC along-with material available on record goes to show that the deceased committed suicide by burning herself within a period of few days after the marriage in her matrimonial house where the petitioners were jointly residing and there are prima facie allegations that the deceased was subjected to harassment and cruelty by the petitioners in connection with the dowry.

Prima facie, there seems to be the involvement of the petitioners. It is unfortunate that a newly married daughter-in-law could not receive resistance or rescue of the family members who say that even after the complete burns of 90%

335

they could not notice the same in a small house where all of them were living jointly.

12) In the result, this Court is of the opinion that the learned Sessions Judge has not committed any error of law in framing the charges against the petitioners and the impugned order framing charges and also the charges framed against them cannot be interfered by this Court. The petitions have no merit and the same are dismissed confirming the orders passed by the Court below.

Sd/-
Sunil Kumar Sinha
Judge

|Rao|